

1 no?

2 A. No, I don't remember. I do not know.

3 Q. Who if anyone at Total Petroleum Puerto Rico decides or  
4 chooses the petroleum that will be sold in the Puertorrican  
5 market?

6 A. The management here, of Total over here, that's why they  
7 entered Puerto Rico, to be able to sell petroleum parts and  
8 it's derivates.

9 Q. So is it fair to say that Total Puerto Rico is the  
10 company that chooses what gasoline to sell in Puerto Rico  
11 under the Total brand?

12 A. Yes, correct.

13 Q. And it's at it's total discretion, right?

14 A. That's correct, in compliance with the local market.

15 Q. Thank you.

16 Does any other service station in Puerto Rico, other than  
17 Total, sell gasoline from the refinery in St. Croix?

18 A. It is not in my knowledge, because I do not know if the  
19 supplies that are in the market they are buying from another  
20 supplier that is not the refinery in St. Croix.

21 Q. No further questions of this witness, Your Honor.

22 **CROSS EXAMINATION**

23 BY ATTORNEY LEE SEPULVADO-RAMOS:

24 Q. Mr. Bermudez, as part of your testimony you testified  
25 that there was an agreement between Esso and Total Petroleum

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1 Puerto Rico for the purchase of Esso assets in Puerto Rico, am  
2 I correct?

3 A. That is correct.

4 Q. Isn't it a fact that as part of that agreement Total was  
5 assigned the rights of the Pabon lease.

6 ATTORNEY JUAN SAAVEDRA-CASTRO: Objection, Your  
7 Honor. Hearsay and (unintelligible) rule. That document has  
8 not been marked as an exhibit and I object to any reference to  
9 that document until it has been presented in evidence.

10 THE MAGISTRATE: Overruled.

11 THE WITNESS: That is correct.

12 BY ATTORNEY LEE SEPULVADO-RAMOS:

13 Q. And that was notified to the Pabon brothers by virtue of  
14 a letter.

15 A. That's correct. They were notified through a leger.

16 Q. You also testified that Total SA was the owner of the  
17 Total Mart's.

18 A. That is correct.

19 Q. Isn't it a fact that Total SA is a parent company of  
20 Total Otremier?

21 A. That's correct.

22 Q. And that Total Otremier is the parent company of Total  
23 Petroleum Puerto Rico?

24 A. That's correct.

25 Q. And that there are inter-company trademark policies

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1 authorizing Total Petroleum Puerto Rico to use the Total  
2 marks.

3 A. That is correct.

4 Q. It is also proved that within the total entities there  
5 are gasoline refiners.

6 ATTORNEY JUAN SAAVEDRA-CASTRO: Objection, Your  
7 Honor, leading.

8 THE MAGISTRATE: Well, I understand, but it's still  
9 a cross.

10 ATTORNEY JUAN SAAVEDRA-CASTRO: He has the burden on  
11 this motion---

12 THE MAGISTRATE: But he is cross examining the  
13 witness and he may be---

14 ATTORNEY LEE SEPULVADO-RAMOS: There is no---

15 THE MAGISTRATE: He was yours, and he's on cross,  
16 and it may seem a little bit difficult to (unintelligible)  
17 sometimes, and I guess he's leading, and I guess it's fine.

18 ATTORNEY JUAN SAAVEDRA-CASTRO: But he has not shown  
19 that he's an adverse witness, Your Honor.

20 THE MAGISTRATE: He's not, but he's on cross  
21 examination, by definition.

22 THE WITNESS: That is correct.

23 BY ATTORNEY LEE SEPULVADO-RAMOS:

24 Q. And that refinery refines products under the Total mark.

25 A. Yes, they refine through the brand Total.

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1 Q. And as previously stated, Total Petroleum Puerto Rico is  
2 authorized by inter-company policies to sell petroleum  
3 products under the Total trademark.

4 A. That is correct.

5 Q. You also testified that as part of the Esso and Total  
6 agreement, Total was authorized to use Esso's trade dress,  
7 correct?

8 A. Correct.

9 Q. And Esso's color patterns.

10 A. We were authorized to use the color patterns and the  
11 trade dress.

12 Q. And as you testified, the Esso trademarks are registered  
13 with the United States Patent and Trademark Office.

14 A. That's correct. They are registered through that form.

15 Q. And the trade dress that we've been discussing, the one  
16 that Total was authorized, the Esso trademark that we've been  
17 discussing, and that was authorized through Total, it was  
18 authorized for Total to use it in the sell of petroleum  
19 products in Puerto Rico.

20 A. That's correct. This is the way it was agreed so that we  
21 could use it and it was authorized to use those color patterns  
22 for a period of time only until we did the flagship of the  
23 stations to the total brand.

24 ATTORNEY JUAN SAAVEDRA-CASTRO: Your Honor, I move  
25 to strike that testimony, Your Honor. I am at a terrible

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1 disadvantage. I have requested Plaintiff's to produce the  
2 contract presumably authorizing this licence, I have not been  
3 given access to that document, and Plaintiff is asking  
4 questions about a document that I have not had a chance to  
5 review and challenge this testimony, Your Honor, I think  
6 that's really unfair.

7 THE MAGISTRATE: Which document is this?

8 ATTORNEY JUAN SAAVEDRA-CASTRO: The so-called Esso  
9 licence agreement to Total, Your Honor. I have not seen that  
10 document, it has not been produced to me.

11 THE MAGISTRATE: It's overruled.

12 BY ATTORNEY LEE SEPULVADO-RAMOS:

13 Q. So the trade dress that we've been discussing, the one  
14 owned by Esso in Total's authorized use, that's the one that  
15 was exhibited in all the Esso stations in Puerto Rico?

16 ATTORNEY JUAN SAAVEDRA-CASTRO: Your Honor, mis-  
17 characterization to the prior testimony. The prior testimony  
18 has been that Exxon Mobile is the owner and the registrant of  
19 the mark, not Esso.

20 THE MAGISTRATE: You have a problem, just a  
21 practical problem, that you can basically say anything you  
22 want and you will agree and add to it, and that's what's going  
23 to happen, it's going to trigger an objection. Your objection  
24 is overruled, but it's still going to trigger these  
25 objections.

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